

Arnold & Porter

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August 16, 2024

VIA ECF

The Honorable Loretta A. Preska
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, NY 1007-1312

Re: *In re Energetic Tank, Inc.*, No. 1:18-cv-1359 (S.D.N.Y.):
Request for pre-motion conference regarding Claimants
Beckford and Miranda's noncompliance with the Court's May
22, 2024 Discovery Order

Dear Judge Preska:

We write to request a pre-motion conference before moving to dismiss the claims of Claimants Delando Beckford and Clember Miranda for failure to complete their court-ordered psychiatric independent medical examinations (IMEs) according to the deadlines established by the Court.

On April 26, 2024, Petitioner filed two pre-motion conference letters asking the Court to compel Mr. Beckford and Mr. Miranda to complete their psychiatric testing and psychiatric IMEs. ECF No. 551-52. Petitioner's pre-motion letters explained that Mr. Beckford and Mr. Miranda had refused for many months to participate in discovery and would not submit to psychiatric evaluations in connection with their claims of post-traumatic stress disorder and other alleged psychological injuries. Counsel for Claimants Beckford and Miranda indicated in their response letter, and at the May 15, 2024 hearing before the Court, that they did not oppose Petitioner's requested relief, but asked that the Court allow Claimants additional time to complete their psychiatric testing and psychiatric IMEs. ECF No. 555-56, 565. Accordingly, the Court ordered that Mr. Beckford complete his outstanding

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psychological testing and psychiatric IME by no later than July 31, 2024, and ordered Mr. Miranda to complete his outstanding psychiatric IME by no later than August 15, 2024. ECF No. 570. The Court warned both Claimants that failure to comply with these deadlines would result in dismissal of their claims. *Id.*

Despite repeated attempts by Petitioner's counsel to arrange the required examinations in the ensuing three months – and despite the apparent efforts of Claimants' counsel to facilitate their clients' availability – both Mr. Beckford and Mr. Miranda have failed to complete their psychiatric IMEs. Accordingly, the Court should now dismiss both Claimants' claims, consistent with the Court's May 22, 2024 order. Petitioner requests a pre-motion conference with the Court before filing its formal motion to dismiss the claims of Mr. Beckford and Mr. Miranda for failing to complete their court-ordered psychiatric evaluations according to the generous deadlines established by the Court.

Very truly yours,



Christopher M. Odell
Counsel for Petitioner Energetic
Tank, Inc.